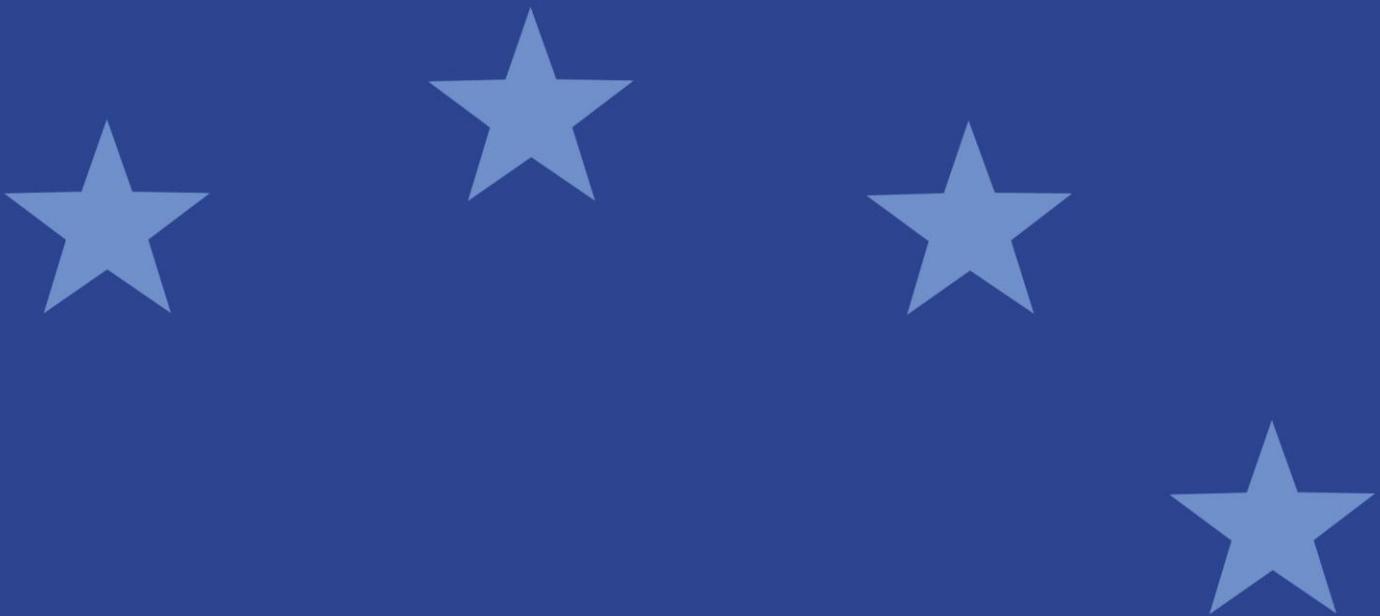




European Securities and
Markets Authority

Reply form for the Draft regulatory technical standards under the ELTIF Regulation



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on Draft regulatory technical standards under the ELTIF Regulation, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_ELTIIF_RTS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ELTIIF_RTS_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_ELTIIF_RTS_ESMA_REPLYFORM or

ESMA_ELTIIF_RTS_ESMA_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **14 October 2015**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



General information about respondent

Name of the company / organisation	Irish Funds Industry Association
Confidential ¹	<input type="checkbox"/>
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Ireland

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_ELTIF_RTS_1>

The Irish Funds Industry Association (“Irish Funds”) is the representative body for the international investment fund community in Ireland, representing managers, depositaries, fund service providers, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. We welcome the opportunity to respond to the ESMA consultation on the proposed draft RTS under the ELTIF Regulation (the ‘**Consultation Paper**’). Irish domiciled AIFs hold net assets of EUR 457 billion and Irish domiciled UCITS hold net assets of EUR 1,430 billion, as of July 2015. As a leading fund centre, the ESMA consultation on ELTIFs is of particular importance to and impactful on to the funds industry in Ireland.

We would firstly like to acknowledge the Commission’s objective under the Capital Markets Union (“**CMU**”) initiative to encourage the take-up of ELTIFs and the Commission’s intention to recalibrate Solvency II requirements to facilitate investment in ELTIFs from insurers. Irish Funds and other industry bodies such as EFAMA have also made several proposals to the Commission in order to increase the usability and attractiveness of ELTIFs and we look forward to further progress on this front in the coming months. Some of these proposed measures include:

- (i) Facilitating investment by UCITS and other retail investment products
- (ii) Devising criteria to facilitate investment by semi-professional investor categories
- (iii) Applying more flexible diversification rules in the case of ELTIFs open only to professional investors
- (iv) Addressing barriers to lending across the EU
- (v) Addressing regulatory and fiscal barriers to long-term investing
- (vi) Clarifying the ability of ELTIFs to invest in as well as originate loans
- (vii) Allowing for an extension of the lifetime of the ELTIF in line with the best interests of investors
- (viii) Exempting ELTIFs from the Prospective Directive disclosure requirements, given the disclosure requirements that will apply derived from the UCITS KIID and PRIIPS rules

With the exception of (vi) above, we appreciate that these are areas outside the remit of ESMA’s Consultation Paper. However, many of the industry comments in relation to ELTIFs have focussed on the need to avoid a “one size fits all” approach and to refrain from developing an overly prescriptive framework, given the very diverse nature of investment projects that would need to be structured within ELTIFs. This principle equally applies to the setting of appropriate and proportionate RTS for ELTIF, which will play in a key role in determining whether the ELTIF is workable for industry and the market.

¹ The field will be used for consistency checks. If its value is different from the value indicated during submission on the website form, the latest one will be taken into account.



Consequently many of our comments focus on the need to avoid defining extensive or exhaustive categories, lists or criteria in the RTS, given the diverse nature of long term illiquid investment projects and the need for the manager to be able to tailor policies appropriately to the specific project. An overly prescriptive approach will not serve investors or the economy well and will work against the objectives of CMU and ELTIF to promote investment in SMEs, infrastructure, technology and sustainable energy. We therefore ask for sufficient scope and adaptability to be provided to ELTIF managers in applying the RTS to their products.

<ESMA_COMMENT_ELTIF_RTS_1>

Q1 Do you agree that the abovementioned pieces of legislation and associated regulatory framework are relevant for the purpose of the present advice on Article 9(3) of the ELTIFs Regulation? Which other pieces of legislation and associated regulatory framework do you identify for that purpose?

<ESMA_QUESTION_ELTIF_RTS_1>

There is a need to differentiate hedging from hedge accounting (as set out in IAS 39 / IFRS 9).

Investment funds do not typically apply the GAAP or IFRS hedge accounting rules and as such it is not useful to look to IFRS or US GAAP for a definition of hedging from a risk management perspective. For this reason we do not believe it is appropriate to consider International Financial Reporting Standard (IFRS) 9 Financial instruments (July 2014, as well as IFRS adopted in accordance with Article 3 of Regulation (EC) No 1606/2002) when specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments of the ELTIF.

When specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments referred to in paragraph 2(d) we agree that there is merit in considering both:

- Regulation 149/2013 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP; and
- CESR's guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (10-788).

<ESMA_QUESTION_ELTIF_RTS_1>

Q2 Do you think that the main risks that are necessary to be covered at the level of the ELTIF are currency, inflation and interest rate risks? If no, which types of risk would the manager of an ELTIF potentially have to cover in your view?

<ESMA_QUESTION_ELTIF_RTS_2>

The RTS should not be prescriptive in the risks that the ELTIF manager may seek to hedge but should instead seek to prescribe conditions which the ELTIF must meet in order for hedging to be permissible. We would strongly recommend that ESMA seeks to avoid listing the main risks that are necessary to be covered at the level of the ELTIF, as it is not possible to determine all of these risks in advance due to the diverse nature of funds that may be set up as ELTIFs and the specific risks that could arise. An ELTIF manager needs to be given sufficient scope to be able to determine these risks specific to the nature of each ELTIF.

In this regard CESR guidelines on Risk Measurement and the Calculation of Global Exposure may be a useful starting point. The following criteria could be developed as the framework for determining when activity / positions are to be considered hedging:

- Hedging arrangements may only be undertaken if they offset the risks linked to some assets;
- Investment strategies that aim to generate a return should not be considered as hedging arrangements;
- There should be a verifiable reduction of risk at the ELTIF level;
- The risks linked to FDI, i.e. general and specific if any, should be offset;
- They should relate to the same asset class; and



- They should be efficient in stressed market conditions.

As stated in the CESR guidelines on Risk Measurement and the Calculation of Global Exposure, hedging arrangements could be broadly defined as combinations of trades on financial derivative instruments and/or security positions, which do not necessarily refer to the same underlying asset, and where the trades on financial derivative instruments and/or security positions are concluded with the sole aim of offsetting risks positions and managing exposure levels.

This is in line with the approach in Regulation 149/2013 which states an OTC derivative contract shall be objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, by itself or in combination with other derivative contracts, directly or through closely correlated instruments, it meets one of the following criteria:

- (a) it covers the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;
- (b) it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

In our view Regulation 149/2013 takes a broader approach than the CESR guidelines on Risk Measurement and the Calculation of Global Exposure which may be preferable given, as acknowledged in the Consultation Paper, the scope of the risks that might have to be covered at the level of the ELTIF by the manager of the ELTIF is difficult to assess and limit ex ante.

<ESMA_QUESTION_ELTIF_RTS_2>

Q3 Do you think that the approach to hedging should not limit ex ante the scope of risks that ought to be covered by the manager of the ELTIF?

<ESMA_QUESTION_ELTIF_RTS_3>

We agree with ESMA's view that the scope of the risks that might have to be covered at the level of the ELTIF by the manager of the ELTIF is difficult to assess and limit ex ante, and should therefore not be prescribed in the RTS but rather the RTS should seek to develop the criteria under which transactions can be assessed. This is consistent with the mandate given to ESMA in articles 9(3) of the ELTIFs Regulation which states as follows:

"In order to ensure consistent application of this Article, ESMA shall, after conducting an open public consultation, develop draft regulatory technical standards specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments referred to in paragraph 2(d)."

ESMA's mandate is not to prescribe a list of permissible risks which may be mitigated at the level of the ELTIF by the manager of the ELTIF.

<ESMA_QUESTION_ELTIF_RTS_3>

Q4 On the contrary, do you think that the approach to hedging should be tailored to the specific case of ELTIFs, and their possible eligible investments? Do you think that in this case the risks that

might have to be covered by the manager of the ELTIF should be limited to the types of risk that were mentioned in question 2?

<ESMA_QUESTION_ELTIF_RTS_4>

We reiterate our view that it is not possible or desirable for ESMA to try to seek to prescribe an exhaustive list of hedging risks for ETIFs, nor is ESMA mandated to do this. It is important to leave the ELTIF manager with the scope to tailor the hedging policy to the specific risks of each ELTIF.

<ESMA_QUESTION_ELTIF_RTS_4>

Q5 Do you identify any consequences in terms of costs or scope of the eligible investments of the ELTIF if the risks that might be covered at the level of the ELTIF are limited to those that were mentioned in the impact assessment of the Commission?

<ESMA_QUESTION_ELTIF_RTS_5>

It is likely that any effort to limit ex ante the scope of risks that ought to be covered by the manager of the ELTIF would in fact potentially limit the attractiveness of the ELTIF for investors and managers alike as it would result in the manager being unable to mitigate certain risks which they would otherwise seek to mitigate. It could result in ELTIF managers not investing in certain permissible asset classes if they are unable to hedge out elements of the risk associated with investing in such asset classes.

For example, while Recital 14 states that given the liquid nature of commodities and the financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded from eligible investment assets, we would submit that in certain circumstances it may be permissible for an ELTIF to hold commodities derivatives for hedging purposes to hedge the commodity exposure that exists in a permissible ELTIF investment.

<ESMA_QUESTION_ELTIF_RTS_5>

Q6 Do you agree with the proposed approach? Should you disagree, please provide reasons and propose an alternative approach and justify it.

<ESMA_QUESTION_ELTIF_RTS_6>

We agree that the initial life of the ELTIF should be determined by reference to the assets with the longest maturity life-cycle known at the time of the creation of the ELTIF, subject to the ELTIF complying with the investment restrictions set out in Article 13 of in the Regulation.

However, it is possible that during the life of the ELTIF, the AIFM may consider new investment opportunities which would be beneficial to the shareholders of the ELTIF, or circumstances may change which alter or extend the economic life-cycle of individual assets already within the ELTIF's portfolio (e.g. a delay in planning approval). Article 18 of the Regulation provides for the right to extend temporarily the life of the ELTIF and the conditions for exercising such a right. The RTS should not be limiting in terms of the circumstances in which a temporary extension may be made, as it is not possible to envisage an exhaustive list of the individual circumstances that might arise. The ELTIF should have the flexibility to determine this and set this out in the rules or instruments of incorporation. Therefore, the RTS should simply confirm the ability for the directors of the ELTIF to extend the life of the ELTIF subject to approval by shareholders or upon notice to shareholders, as required by the rules or instruments of incorporation of the ELTIF.

The RTS should also clarify that the directors of the ELTIF may make such an extension at any point during the life of the ELTIF, subject to approval by shareholders or upon notice to shareholders as required by the rules or instruments of incorporation of the ELTIF.

<ESMA_QUESTION_ELTIF_RTS_6>

Q7 Do you agree with the risks identified and the related proposed criteria? Would you suggest the introduction of any additional/alternative risks/criteria? Please provide details and explain your position.

<ESMA_QUESTION_ELTIF_RTS_7>

We agree with the risks identified and the policy objective (to create harmonised standards for the implementation of the ELTIF Regulations).

The risks identified are reasonably broad and appropriate albeit not all would necessarily be described as pure market risk, e.g. risks associated with legislative changes would be more appropriately described as political risks, however recognising their impact on transactions in the market place. We would recommend against including part (b) – "whether the potential buyers are dependent on external financing" – this would be a difficult assessment for the manager of the ELTIF to undertake and has the potential to increase administrative costs for the manager. The assessment that there are potential market buyers are present in the market place (i.e. (a) is sufficient).

We welcome the ESMA position against setting out a list of all types of risks which managers of ELTIFs should take into account, as it could be a costly exercise for managers of ELTIFs to assess and there would be no guarantees that the assessment occurring one year from the end of the ELTIF would be borne out. However whilst we agree with the proposed approach and do not advocate "gold plating" by National Competent Authorities ("NCAs"), ESMA should recognise that managers of ELTIFs are best placed to determine the additional/alternative risks associated with ELTIFs underlying assets and the RTS should give them latitude to include these risks (in addition to the specified list).

We also agree that the assessment for a market for potential buyers should only extend to "eligible investment assets" and not to assets referred to in Article 50(1) of Directive 2009/65/EC (UCITS eligible assets), as the latter by their very nature are liquid and a market for potential buyers is readily available.

<ESMA_QUESTION_ELTIF_RTS_7>

Q8 Do you agree with the proposed valuation criteria? Would you suggest the introduction of any additional/alternative criteria? Please provide details and explain your position.

<ESMA_QUESTION_ELTIF_RTS_8>

We do not agree with the proposal to set out a minimum standard distinct from AIFMD on elements to be taken into account for the valuation of assets to be divested. Managers of ELTIFs should be able to rely on existing valuation rules set out under Article 19 of AIFMD and the accompanying AIFMD L2 framework (Articles 67-74). Specific valuation rules for ELTIFs other than those prescribed under AIFMD are unnecessary, the valuation rules should relate to the underlying assets regardless of the product that the assets are held in – investors should expect a consistent valuation approach of similar asset types regardless of the fund product that they are held in.

We have no objection against the 6 month valuation proposal provided that it will include any valuation undertaken in that time period pursuant to Article 19 of AIFMD.

We would question whether the use of the "fair value" definition in IFRS 13 (Fair Value Measurement) is appropriate for the ELTIF. This definition supposes that there is a readily available market price. Given the nature of ELTIF assets (illiquid, long term, hard to value) the likelihood is that the ELTIF manager will not be able to find a market price and will have to rely on a third party expert (e.g. a quantity surveyor). In such instance there is a significant possibility that the actual price will be different from the expected price. The ELTIF manager should therefore be able to use the AIFMD rules to determine the appropriate valuation of the assets.

<ESMA_QUESTION_ELTIF_RTS_8>

Q9 Do you agree that the abovementioned pieces of legislation and regulatory material are relevant for the purpose of the RTS on Article 25(3) of the ELTIFs Regulation? Which other pieces of legislation and regulatory material do you consider relevant for that purpose?

<ESMA_QUESTION_ELTIF_RTS_9>

The legislation referred to would certainly have commercial relevance, as many fund managers will already have procedures in place in relation to the calculation of the ongoing charges figure required for the UCITS KIID.

As a general observation, the bulk of our responses in relation to cost disclosures (Qs 10-15) depend on the publication of the PRIIPS regulatory technical standards (the "**PRIIPS RTS**"). In this regard, it would be advisable to wait for the publication of the PRIIPS RTS in order to ensure cohesion between the ELTIF responses and PRIIPS (however, please see the below regarding a transition period). An adherence to the PRIIPS RTS will avoid confusion as to the applicable method of cost disclosures, and avoid a scenario in which fund managers may have separate calculation methodologies for UCITS, retail ELTIFs and professional only ELTIFs.

It is agreed that the preferred approach would be for the PRIIPS RTS, and therefore the ELTIF RTS, to be materially similar to the cost disclosures provided for by the UCITS Directive and CESR in their guidelines for calculation methodology. A focus should be made on utilising the existing UCITS rules to the greatest extent possible, to ensure a simplified transition for fund managers.

It is understood that the terms of the UCITS Directive in relation to cost disclosures will be followed by ELTIFs in the interim period until PRIIPS has been introduced.

There is, however, a concern that the subsequent enactment of PRIIPS, and the corresponding change to calculation methodologies, may lead to the reluctance of fund managers to establish ELTIFs prior to the enactment of PRIIPS. One proposal to alleviate this concern is to introduce a transitional period similar to the one contained in paragraph (35) of the recital in the PRIIPS Regulation, in which UCITS and certain other funds are permitted a five year transitional period following the introduction of PRIIPS to comply with its requirements. ELTIFs which have been established prior to the introduction of PRIIPS, and which disclose their cost to capital ratio in their prospectus in line with the UCITS Directive, could be afforded a one or two year transitional period with regard to bringing their cost disclosures in line with PRIIPS, in order to prevent the ELTIF from having to change such methodologies within months of their establishment.

<ESMA_QUESTION_ELTIF_RTS_9>

Q10 Do you agree with the abovementioned assumptions?

<ESMA_QUESTION_ELTIF_RTS_10>

As discussed above, if, as recommended, the PRIIPS RTS leverage off the existing rules in place in relation to the UCITS Directive and the KIID Regulations as they relate to 'ongoing figures', we agree with the assumptions made in Question 10. We are of the opinion that a harmonised costs disclosure methodology not only promotes transparency but enables investors to make a comparison between products. It is therefore important that the components of the quoted figure are the same across ELTIFs so it would not therefore be appropriate to include optional charges (e.g. subscription charges, redemption charges, performance fees) in that figure, but to quote these separately alongside that figure. This will prevent misleading disclosure practices from emerging.

As an ELTIF is structured as a long term investment, and will have a specific duration, we agree with the assumption that certain fixed costs should be amortised over that specific duration and included pro rata as part of the overall annual ratio. We also agree that the assumption that the duration of the



holding period equals the life of the ELTIF is necessary in order to calculate an accurate annual cost to capital ratio, especially in relation to fixed costs.

We agree with the assumption that the costs are those borne by the fund as a whole, rather than a single investor.

<ESMA_QUESTION_ELTIF_RTS_10>

Q11 Do you agree that the types of costs mentioned in the present paragraph are annual costs that could be expressed as a percentage of the capital?

<ESMA_QUESTION_ELTIF_RTS_11>

Yes, it should be possible to quote such fees on an annual basis, assuming that service providers are prepared to charge in this way. One notable omission from the list of charges is valuation costs (e.g. a standing independent valuer for real estate assets). Consistency with PRIIPs costs regime will be important in this regard.

With regard to the costs being expressed as a percentage of the capital, we propose that the figure for capital should be based on the targeted capital of the ELTIF for the first 3-5 years of the life of the ELTIF, and the figure for capital used to calculate the ratio for the remainder of the life of the ELTIF be based on actual paid up capital. As ELTIFs currently have no prescribed minimum term, regard should be had to the length of the individual ELTIF when determining the length of time for which the ELTIF may use targeted capital as its figure for capital in the ratio calculations.

<ESMA_QUESTION_ELTIF_RTS_11>

Q12 Do you think that performance related fees would be relevant costs to be taken into account in the case of ELTIFs?

<ESMA_QUESTION_ELTIF_RTS_12>

Yes, we consider this to be appropriate, as the inclusion of performance fees into the costs of the ELTIF has already been provided for by the ELTIF Regulation and is therefore not subject to change.

<ESMA_QUESTION_ELTIF_RTS_12>

Q13 How would you include performance related fees in the overall ratio referred to in paragraph 2 of Article 25?

<ESMA_QUESTION_ELTIF_RTS_13>

We would suggest that the performance fee not be included in the ratio, but rather stated separately alongside the overall ratio, as is the current practice with the UCITS KIID.

However, if it is to be included, the methodology used in the CESR guidelines in relation to new funds or unsuitable ex-post figures can form the basis for calculating an estimated performance fee for inclusion in the overall ratio. Calculation of the estimated performance fee should be completed on an annual, rather than quarterly, basis to assist with the inclusion of this figure in an annual cost to capital ratio. This annual calculation is also in line with IOSCO guidelines.

Also worth mentioning is Article 13 of Regulation 583/2010 (the “**KIID Regulation**”), which may be of use in the inclusion of an estimated performance fee figure in the overall ratio. This Article states that (i) Funds which charge an all-inclusive fee are permitted to display that figure only in the KIID (may not be appropriate given the probable estimated performance fee); and (ii) funds which set a cap or maximum on an amount to be charged as costs can disclose this figure provided that the management company gives a commitment to absorb any costs which are exceeded. The second option gives scope to include an estimated performance fee into the overall ratio, provided that either (a) the management company is willing to absorb the excess should the performance fee be greater than the estimate; or

(b) the investment manager is willing to cap the potential performance fee at the level given in the estimation.

<ESMA_QUESTION_ELTIF_RTS_13>

Q14 Do you agree that the types of costs mentioned in paragraph 54 are fixed costs and that an assumption on the duration of the investment is necessary to calculate these costs in the numerator of the overall ratio mentioned in Article 25(2), provided that this overall ratio is a yearly ratio?

<ESMA_QUESTION_ELTIF_RTS_14>

We will await PRIIPS guidance on these points, but agree that an assumption on the duration of the fund must be made in order to produce an accurate annual costs to capital ratio for an ELTIF in circumstances where fixed costs are to be included in the calculations of the ratio, as such fixed costs would need to be spread equally over each year of the duration of the ELTIF.

We also agree that establishment costs would be a fixed cost, however, distribution costs are often calculated on an ad valorem basis and therefore not always fixed. As such, and as mentioned above, an assumption on duration of an ELTIF will be required for the calculation of the majority of costs, and the more certainty that exists the more likely the fund costs will be fixed rather than ad valorem.

<ESMA_QUESTION_ELTIF_RTS_14>

Q15 Do you agree that the types of costs mentioned in paragraph 54 may be considered as fixed costs in the case of an ELTIF?

<ESMA_QUESTION_ELTIF_RTS_15>

We suggest that exit costs should be quoted separately to the overall costs ratio (see comments at Q10).

<ESMA_QUESTION_ELTIF_RTS_15>

Q16 Do you agree with the proposed requirements? Would you suggest the introduction of any additional/alternative requirements? Please provide details and explain your position.

<ESMA_QUESTION_ELTIF_RTS_16>

We fully support the requirement that the manager of an ELTIF, the units or shares of which are intended to be marketed to retail investors, should ensure there are sufficient facilities in place to support the retail investor, in their local language. These principles are based on the equivalent provisions outlined in UCITS. We believe this is a sensible approach as they are aimed at providing protection to retail investors. We agree that it is important for retail investors to have access to information and help in their local language, but do not agree that local physical facilities are necessary given the technology available today.

It is important that the RTS do not limit the means through which these facilities can be when the technology has evolved to allow these facilities to be provided online, via email or telephone. The RTS should therefore not require the need for a physical presence in the Member States where the ELTIF is distributed to retail investors and where facilities can be appropriately provided via technical infrastructure which the ELTIF manager, or one of its delegates, has in place.

It is also important that the manner in which retail investors are provided with these additional services reflects existing technological capabilities. A key part of the original UCITS Directive was the requirement for a local facilities and paying agent. These rules were set up at a time when cross-border bank transfers in the EEC were slow and expensive and it was difficult to obtain adequate information (in the appropriate language) on a cross-border basis (before the internet existed). Furthermore, the rules assume a model of direct sales of UCITS whereas in practice the vast majority of UCITS sales are intermediated through a local advisor or execution platform which is designed to facilitate payments

and provide access to all the information a retail investor may need. The result is that currently managers put in place facilities agents and paying agency agreements around Europe which are in practice never used.

We recommend that the investor protection mechanisms set out in UCITS Article 92 and in ELTIF Article 23 should be updated with rules which reflect the widespread use of the internet, the ease with which cross-border payments can be made and the reality of contemporary distribution models.

In short, the RTS should recognise the advances made since the first UCITS Directive in 1985, when such support may not have been available via technological infrastructure.

Furthermore, it is imperative that local regulators refrain from “gold plating” the requirements, for example by insisting on the appointment of a local entity in the Member State in which the ELTIF is distributed to retail investors in order to satisfy the facilities requirement.

We welcome the following statement made in the CMU Action Plan:

The Commission will undertake a comprehensive assessment of European markets for retail investment products, including distribution channels and investment advice, drawing on expert input. The assessment will identify ways to improve the policy framework and intermediation channels so that retail investors can access suitable products on cost-effective and fair terms. The assessment will examine how the policy framework should evolve to benefit from the new possibilities offered by online based services and fintech.

The requirements set out in ELTIF Regulations should complement this commitment.

We have suggested below some small amendments to the draft RTS below:

1. The facilities referred to in Article 26(1) of Regulation (EU) 2015/760 shall provide the following **services** ~~tasks~~:

(a) when receiving retail investors’ subscription, repurchase and redemption orders relating to the units or shares of the ELTIF, ~~they shall~~ process them according to the conditions set out in the ELTIF marketing documents;

(b) ~~they shall~~ inform retail investors on how the orders mentioned under letter (a) can be made and how the repurchase and redemption proceeds are paid;

(c) ~~they shall~~ make payments to unit- or shareholders of the ELTIF, including ~~in relation to~~ any distribution of proceeds and capital made according to Article 22 of Regulation (EU) 2015/760;

(d) ~~they shall~~ facilitate the handling of any issues that retail investors have relating to their investment in the ELTIF in the Member State where the ELTIF is marketed; and

(e) ~~they shall make available~~ **provide** to retail investors **on request**, ~~for inspection and for the obtaining of copies of:~~

- i) the fund rules or instruments of incorporation of the ELTIF;
- ii) the prospectus and key information document of the ELTIF;
- iii) the latest published annual report of the ELTIF.

The facilities referred to in this this paragraph may be provided through a local agent or by means of technical infrastructure, including online or telephone facilities.



<ESMA_QUESTION_ELTIF_RTS_16>

Q17 What would you consider as appropriate specifications for the technical infrastructure of the facilities?

<ESMA_QUESTION_ELTIF_RTS_17>

It is not appropriate to specify the technical infrastructure of the facilities other than to require that they are available through a stable, easily accessible online capability which is notified to investors prior to their initial investment in the ELTIF and that any subsequent change to the facility is notified to existing investors in advance of such a change.

Specifications should not be made to technical infrastructure as technology is ever changing and the pace of the regulatory change rarely happens at same pace. Therefore to avoid the specifications becoming outdated and irrelevant to the market in the future a degree of flexibility should be built into the requirements.

<ESMA_QUESTION_ELTIF_RTS_17>

Q18 In the event that the RTS enter into force after the date of application of the ELTIF Regulation and authorisations are granted between the date of application of the ELTIF Regulation and the date of application of the proposed RTS, do respondents see a need for specific transitional/grandfathering provisions for the proposed RTS?

<ESMA_QUESTION_ELTIF_RTS_18>

Yes, our view is that no manager should be prevented from launching an ELTIF from the effective date of the Regulation, i.e. 9 December 2015. Acknowledging the difficulties that arise without having the RTS in place at the time of the effective date, we would urge ESMA to complete and publish the RTS as soon as possible. Should the RTS not be published by the effective date, it would be appropriate to apply a grandfathering period of one year to allow ELTIF managers time to adapt to the RTS. ESMA has previously taken this approach with regard to timeframes for updating disclosures, e.g. ESMA's guidelines on ETFs and other UCITS issues. It is important that ELTIFs approved by a NCA on or after 9 December 2015 but before the ELTIF RTS are finalised, are allowed to avail of the EU marketing passport and will not be considered as non-compliant by other NCAs during the transitional period.

<ESMA_QUESTION_ELTIF_RTS_18>

Q19 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the options as regards hedging? Which other costs or benefits would you consider in this context?

<ESMA_QUESTION_ELTIF_RTS_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ELTIF_RTS_19>

Q20 Do you agree with the assessment of costs and benefits above for the proposal on the sufficient length of the life of the ELTIF? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

<ESMA_QUESTION_ELTIF_RTS_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_ELTIF_RTS_20>

Q21 Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the assessment of the market for potential buyers? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.



<ESMA_QUESTION_ELTIF_RTS_21>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_ELTIF_RTS_21>

Q22 Do you agree with the assessment of costs and benefits above for the proposal on the criteria for the valuation of the assets to be divested? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs (if any) that the proposal would imply.

<ESMA_QUESTION_ELTIF_RTS_22>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_ELTIF_RTS_22>

Q23 Do you agree with the above-mentioned reasoning in relation to the possible costs and benefits of the option taken by ESMA as regards common definitions, calculation methodologies and presentation formats of costs of ELTIFs? Which other types of costs or benefits would you consider in this context?

<ESMA_QUESTION_ELTIF_RTS_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_ELTIF_RTS_23>

Q24 Do you agree with the assessment of costs and benefits above for the proposal on the facilities available to retail investors? If not, please explain why and provide any available quantitative data on the one-off and ongoing costs that the proposal would imply.

<ESMA_QUESTION_ELTIF_RTS_24>
We agree with the reasoning in relation to the possible costs and benefits of the options regarding facilities available to retail investors. However it is important that the RTS do not limit the scope of how these facilities can be provided and clarify that they may be provided through technical infrastructure that the ELTIF manager, or one of its delegates, has in place and that the requirements do not imply the need for a physical presence in the Member States where the ELTIF is distributed to retail investors and where these facilities can be adequately provided via technical infrastructure. See our responses in Questions 16 & 17.
<ESMA_QUESTION_ELTIF_RTS_24>